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August 24, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-2010-035

Dear Ms. Murphy:

I am writing in response to the above-referenced proposed rule change (the "Rule Change"), by which FINRA Dispute Resolution, Inc. ("FINRA") seeks to amend the Discovery Guide and the Document Production Lists which govern the exchange of documents in arbitrations initiated by customers of broker-dealers. While I applaud FINRA's attempt to modernize the lists, I believe that the Rule Change, as proposed, is unwise.

My primary concern with the Rule Change is that it would greatly expand the production of documents that relate to non-parties. More specifically, the Rule Change would require respondents to disclose vast amounts of information about its other customers, without any regard whatsoever for the legitimate privacy rights of those other customers. In addition to my concern that the Rule Change tramples upon the privacy rights of these non-parties, I am concerned that hearings may devolve into multiple "mini-trials" during which claimants will try to prove that wrongdoing has taken place with respect to these other customers, thereby requiring respondents to disprove allegations of wrongdoing with respect to these non-parties, even where these non-parties have never once made a complaint with regard to their accounts.

List 1, Item 13(b), for instance, would require, in all cases in which there is an allegation of a failure to supervise, the production of "all exception reports, supervisory activity reviews, concentration reports, active account runs, and similar documents produced to review for activity in customer accounts handled by associated persons and related to the allegations in the Statement of Claim…." Since there is an allegation of a failure to supervise in nearly all sales practice cases, this category of documents would be required in virtually every customer case that is filed.

Compliance with this Item would entail turning over to a claimant vast amounts of highly personal information about these other customers. For example, the exception reports and supervisory activity reviews would, in all likelihood, reflect information about these non-parties such as their: name; age; income; net worth; liquid net worth; investment objectives; risk tolerance; trading strategies; and trading history.

Once armed with all of this information, a claimant would use these documents to argue that there is evidence of wrongdoing with respect to the other customers whose information is reflected therein, and then use this other evidence of supposed wrongdoing to argue that there is a pattern and practice of wrongdoing in which the registered representative has engaged. In addition, these documents would also be used to argue that there was a systemic breakdown in the supervision of the registered representative's sales practices.

If a Panel permits the documents to be admitted into evidence and permits such arguments to be made, the broker-dealer and/or the individual registered representative will be left with no option but to rebut these arguments by providing even more evidence with respect to these other customers. The registered representative may have no choice but to testify, at length, about: his or her relationship with these other customers; just how sophisticated they are; whether the trading in the accounts of these other customers was solicited or unsolicited; and whether the investments in these other accounts did or did not represent all of the assets of these other customers. Likewise, the broker-dealer facing such arguments may have no choice but to present documents such as: activity letters sent to these other clients; letters of non-solicitation; and notes of conversations between branch management and these other clients. In some instances, it may even be necessary to seek to compel the testimony of these non-parties, thereby further trouncing upon their privacy rights.

Similarly, List 1, Item 16 would require, in all instances, the production of "All investigations, charges, or findings by any regulator (state, federal or self-regulatory organization) and the firm/associated persons' responses to such investigations, charges, or findings for the associated persons' alleged improper behavior similar to that alleged in the Statement of Claim." This particular request is also objectionable.

When a sales practice complaint is first reported via Forms U-4 or U-5, it is standard practice for one or more regulators to initiate an investigation into that complaint. As part of that investigation, the regulator undertaking the investigation typically requests a laundry list of documents for the newly-reported complaint, along with similar documents for all prior complaints. Among the documents typically requested for any customer who has complained are: new account documents; monthly account statements; trade confirmations; correspondence with the customer; a copy of all complaints; and a copy of all responses to all complaints.

If the Rule Change is adopted, respondents would be required to produce to a claimant all of the documents submitted in response to any prior regulatory investigation, regardless of the outcome of that prior investigation. Once again, I ask how production of such highly confidential information about one or more other customers, none of whom are parties to the present arbitration, can be considered appropriate.

I also note that unlike other of the items in List 1 (see List 1, Items 10 and 20(b)), there is nothing in List 1, Items 13(b) or 16 that confirms that a respondent is permitted to redact the documents to be produced so as to protect the identity of these other customers. The absence of any such language, in contrast to its presence in other of the list items, will naturally be argued by claimant's counsel to prohibit the redaction of any such information.

Even if List 1, Items 13(b) and 16 were interpreted to permit redaction, redaction of all of the documents could be an exceedingly expensive and time-consuming task. Some broker-dealer's monthly account statements repeat the name of the customer on each and every page of the statement, thereby requiring the redaction of information on hundreds, if not thousands, of pieces of paper. Activity reports and exception reports can also be quite voluminous, and may have identifying information about the customer strewn throughout the reports, all of which will have to be redacted.

Thus, simply complying with these two discovery items could significantly increase the cost of a documentation production, and the additional time that it takes to complete the redaction of these documents could also result in a further delay in the production of documents.

Also, even under the best of circumstances, mistakes are sometimes made, and information which should have been redacted is sometimes overlooked. Just one such omission could result in the unwarranted disclosure of the identity of a non-party.

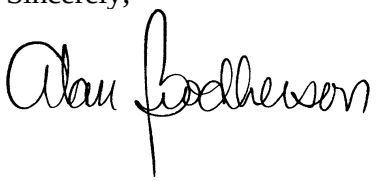
I also note that the concerns expressed above regarding the privacy of non-parties cannot be addressed by the execution of a confidentiality agreement. Whereas the execution of a confidentiality agreement may be a sufficient safeguard for confidential information about a party to a litigation, non-parties should not have personal information divulged with nothing more than a confidentiality agreement to protect them. Indeed, most non-parties to litigation would be appalled to know that their personal financial information has been divulged, and would take no comfort whatsoever from the fact that a confidentiality agreement supposedly limits the uses which can be made of their most private financial information.

Another of the items on List 1 which I question is List 1, Item 10, which requires the production of, among other things, "All Forms RE-3, U-4, and U-5 and Disclosure Reporting Pages, including all amendments,…."

Routine filings on Forms U-4 and U-5 (for example, filings made when a registered representative seeks a license from a new jurisdiction, or seeks to withdraw from a jurisdiction in which the registered representative is no longer doing business) can be quite voluminous. Production of such routine filings should not be required, and only those forms which relate to the reporting of customer complaints (redacted to protect the identity of complaining customers) should be required.

Finally, I also believe that it is a mistake to move away from the current approach, which has a number of different lists that are applicable, depending upon the specifics of the particular claim, to the proposed "one size fits all" approach. Regardless of whether the existing lists are or are not outdated, there are significant benefits to having a number of different lists, each one of which is targeted to specific allegations in a statement of claim. The primary benefit, of course, is that this approach reduces the time, effort and expense incurred by all parties in complying with their discovery obligations. I see no benefit whatsoever in collapsing these lists to one list per side for all arbitrations, without any consideration given to the nature of the pending allegations.

Sincerely,



Alan S. Brodherson